

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for *Scaevola Coriacea* (Dwarf Naupaka)

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Fish and Wildlife Service determines *Scaevola coriacea* (dwarf naupaka) to be an endangered species, under the authority contained in the Endangered Species Act of 1973, as amended (Act). Populations, once prevalent throughout the major Hawaiian islands, are now limited to four small areas of State and private land in Maui County, Hawaii. The only significant population, near Waiehu Point, is threatened by residential development. Approximately two-thirds

of the plant's remaining habitat will be impacted by this development. Protective measures for the remaining plants are needed. This determination that *Scaevola coriacea* is an endangered species implements the protection provided by the Act.

**EFFECTIVE DATE:** The effective date of this rule is June 16, 1986.

**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232.

**FOR FURTHER INFORMATION CONTACT:** Mr. Wayne S. White, Chief, Division of Endangered Species, at the above address (503/231-6131 or FTS 429-6131).

**SUPPLEMENTARY INFORMATION:****Background**

*Scaevola coriacea* is a sparsely branched, prostrate shrub found in close proximity to the ocean. It was first collected by David Nelson in 1779, and later described by Thomas Nuttall (1843), based on specimens collected on "Atooi" (Kauai) in 1835. Its leaves are thick and succulent, light green, and

about 2.5 centimeters (1 inch) in length. Cream-colored flowers, 1.9 centimeters (0.75 inch) long, may open at any time during the year. The flower is typical of the genus *Scaevola*, with a corolla split down the upper side so that it resembles half of a radially symmetrical flower that has been divided longitudinally. This is sometimes referred to as a "half-flower." The fruit is purplish black and approximately 1.3 centimeters (0.5 inch) in length, and contains 2 seed cells (Carr 1981). Single plants may cover up to 10 square meters (108 square feet) of surface area.

Sites occupied by *Scaevola coriacea* are mostly on low, consolidated sand dunes near the ocean. The habitat is relatively dry and hot. The sites receive high insolation and most of the vegetation is at or near ground level. Associated species include *Scaevola taccada* (a common, shrubby member of the same genus), *Bidens mauiensis*, *Nama sandwicensis*, *Boerhavia diffusa*, and *Lipochaeta integrifolia* (Herbst 1972).

Historically, populations of *Scaevola coriacea* were present on all the major Hawaiian islands, with Maui supporting the most extensive populations. Presently, only four small populations remain in Maui County, Hawaii: at Waiehu Point, West Maui; at Kaupo, East Maui; on the islet of Moke'ehia, off West Maui; and on the islet of Mokuho'oniki, east of Molokai. The islets are part of the Hawaiian State Seabird Sanctuary and are under the jurisdiction of the State Department of Land and Natural Resources. The Waiehu Point population is split between land in State and private ownership. The State-owned land is under the jurisdiction of the County of Maui. The Kaupo population is entirely on private land. Loss of current and suitable habitat to development represents the major threat to the species. Protection of the remaining habitat from degradation, through a cooperative State, Federal, and county effort, is needed to ensure the species' continued existence.

Section 12 of the Endangered Species Act of 1973 (Act) directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report (House Document No. 94-51) was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice of review in the **Federal Register** (40 FR 27823) accepting this report as a petition within the context of section 4(c)(2) of the Act (petition acceptance is now governed by section 4(b)(3) of the Act, as amended).

On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant taxa to be endangered species pursuant to section 4 of the Act. *Scaevola coriacea* was included in the Smithsonian report, the notice of review of July 1, 1975, and the proposal of June 16, 1976.

The Endangered Species Act, as amended in 1978, required that all proposals over 2 years old be withdrawn, except that a 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice of withdrawal of the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired (44 FR 70796). In the **Federal Register** of December 15, 1980 (45 FR 82480), the Service published a revised notice of review. *Scaevola coriacea* was included in this notice as a category-1 species, indicating that existing data warranted proposal to list as endangered or threatened.

The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. *Scaevola coriacea* was subject to this provision, so that a finding was required within one year as to whether its listing was warranted. On October 13, 1983, and again on October 12, 1984, the petition finding was made that listing *Scaevola coriacea* was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. A proposal was published on July 16, 1985 (50 FR 28878), based on information available in 1976 and information gathered after that time and summarized in a detailed status report prepared under contract by a University of Hawaii botanist (Carr 1982). The Service now determines *Scaevola coriacea* to be an endangered species with the publication of this final rule.

#### Summary of Comments and Recommendations

In the July 16, 1985, proposed rule (50 FR 28878) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice that invited general public comment was published in the *Maui News* on August 18, 1985, and in the *Honolulu Star Bulletin* and the *Honolulu Advertiser* on August 21, 1985.

Seven letters of comment were received and are discussed below. A public hearing was requested and held in Kahului, Maui, Hawaii on November 5, 1985. The comment period was reopened following the public hearing, closing again December 9, 1985 (50 FR 42196). Three persons testified; their testimony also is included in the following summary.

Comments were received from a U.S. Congressman, the Governor of the State of Hawaii, the Western Regional Office of the National Audubon Society, a Professor of Botany at the University of Hawaii, a landowner on whose property a part of one population of the *Scaevola* grows, and two other individuals. Testimony at the public hearing was presented by the Administrator of the Division of Forestry and Wildlife of the State Department of Land and Natural Resources, a member representing the Friends of Maui Botanical Gardens, and a private individual. All comments submitted and all testimony given at the public hearing have been considered in formulating this final rule.

Six of the seven letters of comment and all testimony at the public hearing supported listing *Scaevola coriacea* as an endangered species. In his letter of comment, the president of the company that owns several of the sand dunes at Waiehu disagreed with the Service's census of the species. He visited two of the dunes and counted over 1,000 plants on one dune in 1984 and found more than 300 on the other in 1985. The proposed rule stated that the entire known population at Waiehu consisted of approximately 300 individuals. Admittedly it is very difficult to count or to estimate population sizes because of the prostrate, creeping habit of the species. However, many botanists and interested naturalists have visited these dunes and made estimates of the population size; at least four individuals have done so between 1981 and 1985. Their estimates are fairly close and all approximate 300 plants. The company's president recommends that public lands be used to create a protected habitat for the species. Additional information was submitted in this and several of the other letters and has been incorporated into the final rule.

The University professor indicated reservations concerning the Service's failure to propose designation of critical habitat. The Service continues to believe that such designation would not be prudent in this case because of the associated risks of vandalism and collecting.

#### Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Scaevola coriacea* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Scaevola coriacea* Nutt. (dwarf naupaka) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Historically, *Scaevola coriacea* was present on all the major Hawaiian islands, with Maui supporting the largest populations. Presently, the species exists in only four small areas of Maui County, Hawaii: Waiehu Point, West Maui; Kaupo, East Maui; the islets of Moke'ehia off West Maui, and Mokuho'oniki, east of Molokai. The entire known population consists of approximately 350 individuals, 300 of which are found at Waiehu Point (Carr 1981). The Waiehu population may now be smaller as a result of recent urban development in that area.

The Waiehu Point population occurs on four sand dunes, both on State land, as part of Waiehu Golf Course, and on private land, owned by a realty company. The latter is presently being developed into residential lots. This action will cause loss of nearly two-thirds of the species' remaining habitat. Habitat degradation of the remaining fraction of public land by the activity of golfers off the fairway is a potential, but probably minimal, threat to the plant.

*Scaevola coriacea* can not compete with aggressive weedy species. Koa haole (*Leucaena leucocephala*) and other plants appear to be encroaching on some of the Waiehu habitat.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* *Scaevola coriacea* is subject to potential collecting and vandalism due to the accessibility of its habitat and current unprotected status. The flowering plant is attractive, is easily propagated, and has been noted as being "... a worthwhile plant for homes by the beach" (Degener and Greenwell 1950).

C. *Disease or Predation.* No such threats to *Scaevola coriacea* are known to occur at this time.

D. *The inadequacy of existing regulatory mechanisms.* A special permit is required to land on Mokuho' oniki islet, a State bird sanctuary. No other protection is now provided to *Scaevola coriacea*.

E. *Other natural or manmade factors affecting its continued existence.* Further reductions of the breeding population may have adverse effects on the reproductive capacity and survival ability of this species (Carr 1981).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Scaevola coriacea* as endangered. The low number of individuals in the wild and the current loss of two-thirds of its remaining habitat warrant this decision. Critical habitat is not being designated at this time because of the reasons discussed below.

#### Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. As discussed under Factor "B" in the "Summary of Factors Affecting the Species," *Scaevola coriacea* is potentially subject to collecting, an activity difficult to control and not regulated by the Endangered Species Act with respect to plants, except for a prohibition against removal and reduction to possession of endangered plants from lands under Federal jurisdiction. The plant currently occurs on State and private land outside Federal jurisdiction. Because publication of critical habitat descriptions would make this species more vulnerable to collecting and vandalism, without providing it with appreciable protection because of the lack of Federal involvement in the areas in which it occurs, there would be no net benefit to this species from such a designation.

#### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition

through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individual. Section 6 of the Act details conditions for cooperative action between the Service and State agencies. Such actions include the establishment of conservation programs, acquisition of land, scientific research, and cooperative funding. The State of Hawaii has entered into a cooperative agreement with the Service. Since much of the remaining habitat of *Scaevola coriacea* occurs on State land, some of which is under county jurisdiction, cooperation among Federal, State, and county officials will be necessary to ensure the continued survival of the species. The protection required of Federal agencies and the prohibitions against collecting are discussed, in part, below:

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No Federal activities are known or expected to affect *Scaevola coriacea*.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export an endangered species of plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell it or offer it for sale in interstate or foreign commerce, or remove it and reduce it to possession from areas under Federal jurisdiction. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain

circumstances. Cultivated specimens of *Scaevola coriacea* can be found at several sites in Hawaii, including the Maui Zoo and Botanical Garden and the courtyard of the Plant Science Building at the University of Hawaii. However, it is anticipated that few trade permits will ever be sought or issued since the species is not otherwise common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-1903).

#### National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the *Federal Register* (October 25, 1983 [48 FR 49244]).

#### References Cited

- Carr, G.D. 1981. Unpublished status survey *Scaevola coriacea*. U.S. Fish and Wildlife Service, Honolulu, Hawaii. 40 pp.
- Degener, O., and A. Greenwell. 1950. Flora Hawaiiensis, family 340. *Scaevola coriacea*. Publ. priv. 2pp.
- Herbst, D.R. 1972. Botanical survey of the Waiehu sand dunes. The Bulletin. Pacific Tropical Botanical Garden 2:6-7
- Nuttall, T. 1843. Descriptions and notices of new or rare plants. Transactions of the American Philosophical Society, N.S. 3:272.

#### Author

The primary author of this final rule Dr. Derral R. Herbst, Office of Environmental Services, U.S. Fish and Wildlife Service, 300 Ala Moana Blvd., P.O. Box 50167, Honolulu, Hawaii 9685 (808/546-7530 or FTS 546-7530).

#### List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife Fish, Marine mammals, Plants (agriculture).

#### Regulation Promulgation

##### PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B, Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pl. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 St

3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

the family Goodeniaceae, to the List of Endangered and Threatened Plants:

**§ 17.12 Endangered and threatened plants.**

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(h) \* \* \*

2. Amend § 17.12(h) by adding the following, in alphabetical order under

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Goodeniaceae—Goodenia family:						
<i>Scaevola coriacea</i>	Dwarf naupaka	U.S.A. (HI)	E	231	NA	NA

Dated: April 24, 1986.

Susan Recce,

Acting Assistant Secretary for Fish and  
Wildlife and Parks.

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